

CHRISTENSON, NOVAK, PAULSON
& TAYLOR
ATTORNEYS AT LAW
PROVO, UTAH

IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF UTAH
IN AND FOR UTAH COUNTY

PROVO RESERVOIR COMPANY, : Civil No. 2898
Plaintiff, :
vs. : REPLY TO COUNTERCLAIM
PROVO CITY, et al, : OF DAVID LONG
Defendants. :

COME NOW Provo Bench Canal and Irrigation Company, Timpan-
ogos Canal Company, Upper East Union Irrigation Company, West Union
Canal Company, East River Bottom Water Company, Fort Field Irrigation
Company, Little Dry Creek Irrigation Company, Smith Ditch Company,
Faucett Field Ditch Company, Riverside Irrigation Company, and Lake
Bottom Canal Company, defendants in the above entitled proceeding
and replies to the Counterclaim filed herein on behalf of defendant
David Long as follows:

FIRST DEFENSE

The Counterclaim fails to state facts or a claim upon which
relief can be granted.

SECOND DEFENSE

1. Defendants admit that Diligence Claim No. 680 has been
filed with the Utah State Engineer, denies all remaining allegations
in paragraph 1 of said Counterclaim and alleges that said diligence
claim, under the facts and circumstances of this case is a self serv-
ing document.

2. Defendants deny paragraph 2 of said Counterclaim.

3. Defendants admit the State Engineer, acting through his
Provo River Commissioner has endeavored to prevent the said David
Long from unlawfully using the waters of said river and its tribu-
taries, and deny the balance of paragraph 3 of said Counterclaim.

4. Defendants admit that there is a stream of water tribu-
tary to the Provo River known as South Fork which traverses in part,

1 the lands of defendant David Long, and deny the balance of para-
2 graph 4.

3 THIRD DEFENSE

4 The above named defendants, by way of a further defense
5 to the Counterclaim of David Long allege as follows:

6 1. That each of the above named defendant irrigation,
7 water, canal, and ditch companies are the owners of the right to
8 the use of the waters of Provo River as confirmed by the decree of
9 this Court in the above entitled cause, dated May 2, 1921, and that
10 all of the rights to the use of all of the waters of the Provo Riv-
11 er, its tributaries, springs, seepage and percolating waters em-
12 braced in the Provo River water shed in Utah County were finally
13 adjudicated among the parties to this cause.

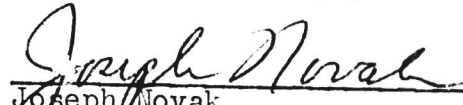
14 2. That the predecessors in interest of defendant David
15 Long were parties to the said final decree, made and entered herein
16 on May 2, 1921, and the adjudication of the rights to the use of
17 all of the waters of Provo River, its tributaries, springs,
18 seepage and percolating waters embraced in the Provo River water
19 shed in Utah County among the parties to this cause is res adjudi-
20 cata and binding upon defendant David Long.

21 3. That Diligence Claim No. 680, filed by defendant David
22 Long in the office of the Utah State Engineer is void and has no
23 force or effect in law or in fact, and the filing thereof was mere-
24 ly an attempt to circumvent the said final decree made and entered
25 in this cause on May 2, 1921.


26 4. That by reason of the said final decree made and entered
27 herein on May 2, 1921, defendant David Long is estopped from assert-
28 ing or claiming any rights to the use of any of the waters of the
29 Provo River, its tributaries, springs, seepage and percolating wa-
30 ters embraced in the Provo River water shed in Utah County under
31 said Diligence Claim No. 680.

32 WHEREFORE, defendants pray that the Counterclaim of defen-
dant David Long be dismissed and that said defendant David Long,

his agents, servants and employees be enjoined and restrained from obstructing or in any manner interfering with the distribution of the waters of the Provo River, its tributaries, springs, seepage and percolating waters embraced in the Provo River water shed in Utah County by the Provo River Water Commissioner.


Joseph Novak
for CHRISTENSON, NOVAK, PAULSON &
TAYLOR
Attorneys for Defendants above
named
623 Continental Bank Bldg.
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Mailed a copy of the foregoing to Mr. Edward W. Clyde, Attorney at Law, 351 South State Street, Salt Lake City, Utah; Mr. J. Rulon Morgan, Attorney at Law, Provo, Utah; Mr. Richard R. Boyle, Assistant Attorney General, State Capital Building, Salt Lake City, Utah; Mr. Robert B. Porter, Attorney at Law, 1407 West North Temple Street, Salt Lake City, Utah, this 7 day of November, 1960.


Joseph Novak

CHRISTENSON, NOVAK, PAULSON
& TAYLOR
ATTORNEYS AT LAW
PROVO, UTAH

2888
FOURTH JUDICIAL DISTRICT COURT OF
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FILED

NOV 8 1960

MARK F. BOYACK, Clerk

John A. [Signature] Deputy